~~B & Sec~~

App. F. IX-4

Previous References

1933. (Rev)

File No. 64 – 33

Serial Nos. 1 — 3

Later References
Rev 64-33-4-17; 18-19

Reserve

77

General and Revenue Secretariat.

PRESERVED

Serial Nos. Three

Part B for Dec^r 33

SUBJECT.

Defalcation to an extent of Rs 6100/- Committed by one N. S. Sarma, Accounts Clerk, S. L. Section of the Comptroller's Office.

---

3) To The Govt. Advocate.
" Comptr. thro' Sl. Sectt.

No. P 2501-2 dy 28-11-33

Records sanction to file a Civil Suit against the Bank of Mysore Ltd.

Dr. Abdul Aziz
16-12-33

B 9/3

G.F. 153-32-1

Confidential

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. FC 2179 2812

Bangalore, dated 11th March 1933.

DEWAN 5328 16 MAR 1933

OFFICE OF THE FIRST MEMBER OF COUNCIL 13 MAR. 1933 No. 5893

From

M. VENKATESA IYENGAR, Esq., M.A.,
Comptroller to the Government of His Highness the Maharaja of Mysore,
Bangalore.

To.

S. Shamanna Esq., B.A.,
Financial Secretary to the Government of Mysore,
Bangalore.

Sir,

I have the honor to report for the information of Government that in the course of the final reconciliation of the accounts of the 4½% Mysore State Loan, it was found that two payments by cheque, one of Rs.350/- and another of Rs.5,750/- had been made to one S.Sreenivasan to whom, so far as can be made out, no amounts were due and who appeared to be a fictitious person. The first of these cheques No. 82 dated 20th February 1932 was cashed at the State Huzur Treasury in the same month. It is not forthcoming, but the counterfoil is found in the book of cheque forms which was in use at the time. The second cheque No. 83 dated 10th March 1932 was drawn on the State Huzur Treasury for payment by cheque on the Imperial Bank of India, Bangalore. This is traced among the vouchers filed in the office, but the counterfoil in the book of cheque forms has been torn and removed. The counterfoil in the first case and the cheque in the second case are both seen to have been prepared by N. S. Sharma who was Accounts Clerk in the State Loan Section at the time and had the cheque forms book in his custody. The first cheque purports to be in payment of interest on 7% Loan Bonds and the second on account of interest on 6¼% Loan. No vouchers or other papers can be traced in the office to which these cheques can be connected. It was therefore suspected that there was some foul play and N. S. Sharma was sent for and got from Mysore. He admitted that S. Sreenivasan was a fictitious person and that he had got the cheques fraudulently and cashed the first one himself and had the second one credited to his wife's account in the Mysore Bank by

transfer

transfer. These transactions have been verified from the records in the State Huzur Treasury and informally from the Mysore Bank and the Imperial Bank of India, Bangalore.

The case has been placed in the hands of the Police and Sharma handed over to them. I shall make a further report in the matter later.

Sharma is stating that he will make good the amount in full. I shall endeavour to recover all that is possible.

I am arranging for a full audit of the whole of the 7% Loan Accounts and of other transactions in the Section for which this clerk was responsible.

I have the honor to be,
Sir,
Your most obedient servant,

M. Venkatesa Iyengar

Comptroller.

Deputation of Rt Hon'ble Secretary of State

Serial No. 6

LEGISLATIVE SECTION
23 MAR. 1933
L. & REV. SECTT.

Draft Subd.

Fridays) 21/3

No H 5057 of 21.3.33 to the Comptr calls for a detailed report on the points raised

No 2505/S.A. of 1.5.33 from the Controller making a further report & bringing to notice another case of fraud for Rs 700/- & another attempted one fixed to the tune of Rs. 350 — all by the same person N.S. Varma

The total amount defrauded is now Rs. 6800/

The report of audit to be dy Comptr will, if appd, be awaited & Comptr has death. no mention of the proposed orders are already with the hands of Hon'ble Subd for general orders

CHIEF SECRETARY. 4 MAY 1933

11 For information and perusal.

Chief Secy) 3/5/33.

DIWAN'S OFFICE 660 3 MAY 1933

Dewan Secy 12 RG (O) 5/33

Fin Secy.

13 Further report promised in the last para will be awaited

Dewan) 12/5

14 Mr Mule 13/5/33. 13/5/33. 15/5/33.

NOTE—Contn. Sheet.

WD 0246 —GPB—15,000—22-8-32

4

155 of 33

File No. 90 of 193 General and Revenue Secretariat

Letter No: 65/S of the 7th July 1933 from the Complt requesting that arrangements may be made to file a civil suit against Sharma with a view to recover certain amounts belonging to him

Is the Pub: Pr: may be consulted in the matter.

Yes 8.7.33.

DEWAN'S OFFICE 266 10. JUL. 1933

16 Formalities the 18th instance

10.7.33

Dewan)

17 Secy Secy 11/7/33

11.7.33.

Law Deptt with compliments.

11.7.33.

18 Please put up a copy of the Judgt of the City Magistrate convicting Sarma for misappropriating Rs 5750/-

11.7.33

19 Copy of the Judgment is put up

20 The total amount misappropriated by Sarma is said to be Rs 6600/-. Of this, the Judgment is C.C. 9500 of 32-33

Serial No.

on the file of the City Magistrate's Court deals with the sum of Rs 5750/- With respect to the defalcation of Rs 350/- another Criminal case CC 951 in the same court is still pending.

2) The copy of the Judgment in CC 950 gives us an account in brief of the modus operandi of the fraud regarding the sum of Rs 5750/-. As regards the other two sums, the necessary facts cannot be made out from the papers sent.

3) There appears to be not much difficulty ~~in filing a civil~~ to file a Civil Suit against Sarma and recover as much as possible from the available assets of the man. But before taking up this course of action it seems desirable to find out how far Govt have any cause of action either against the Imperial Bank or the Bank of Mysore. The cheque by the State Bar Treasury Officer was made out in the name of a fictitious person and Sarma has forged an endorsement. The cheque was a crossed cheque but it is not clear whether it was crossed generally or specially and whether it was crossed so as to make it non-negotiable. The liability of the Bankers

WD 0246 -GPB—15,000—22-8-32

dealing with such cheques is an intricate point in the Law of negotiable instruments - for instance, under sec 131 of the Negotiable Instruments Repn, a banker receiving payment of a cheque crossed generally or specially to himself is not liable to the true owner only if he has received the payment in good faith and without negligence and that too for a customer. It has been held in many cases that a stranger who goes into a Bank to ~~collect~~ get a cheque collected is not a customer of the Bank -

2. Moreover if the cheque has been crossed so as to make it non-negotiable, then under sec 130, the person taking such a cheque has not and is not capable of giving a better title to the cheque than that which the person from whom he took it, had. Thus where H by false pretences obtained from the Great Western Ry Co: a cheque crossed "X Co" and "not negotiable" and took it to a bank, who paid it, it was held in a suit by the Ry Co against the Bank that the cheque having been obtained by the fraud of H, it had no title to the cheque and could not give to

Serial No.

the Bank any time either to the cheque or to the money and that the Bank was liable for the amount of the cheque (1901 A.C. 414).

24 I would therefore suggest that the Comptroller be requested to collect and furnish early the full facts regarding the defalcations by this man, together with the connected records, so that a decision may be arrived at, in consultation with the Govt Advocate, regarding the nature of the suit to be filed and the parties against whom it may be so filed.

A

25 In the meanwhile, the District magistrate will be requested, if approved, to obtain and send for inspn of Govt the records of the City Magistrate's Court in CC 950 of 32-33, which was disposed of on 29th May 1933. These records ~~not~~ contain the depositions of the Bank clerks who were examined and also the cheque in respect of which the fraud was committed.

B

First Member

DRP
12/7/33

vb A.B. I agree
13/7

Letter No: P 243/ dated 5-7-33 to the Dist Collr Bangalore calling for records in CC 950/32 33 in the City Magr's Ct.

13.7.33

NOTE—Contn. Sheet.

DEPT. 03. 20. JUL 1933

Serial No.

Seen & returned. The file may be submitted to Dewan Jr. perusal.

ASO 20/7/33

Dewan)

DNP 20/7/33

MMR 20/7/33

Letter No. J I - 60/33-36 Dated 17th July from the Dist Magistrate, Bangalore, stating that the records in CC 950/32-33 have been sent to the High Court in connection with a reference to enhance the sentence passed -

1) From enquiry in the High Court, I learn that the case is posted for hearing to the 9th August. The records can be had only thereafter -

DNP 21/7/33

2) For kindly putting up the reference at A in the Comptroller's note above

Asst Secy, Fin Br) with Compts)

DNP 21/7/33

3) The reference in question is put up Vide linked file flag A

SKW 26/7

Asst Secy, Law) Seen with Compts) 26.7.33.

4) Seen & Returned with Thanks. The linked file may be retained in the Fin Br. As soon as the detailed report is received from the Comptroller, it may be sent here for info & further action

Asst Secy Fin Br) with Compts)

DNP 26/7/33

5) Linked file detailed & the top file returned with Compts.

SKW 27/7

TSD

6) Please put up on 10/8/33

DNP 27.7.33

Sub? as desired

SKW 28/7

NOTE—Contn. Sheet.

NOTE—Cc

WD 0246 —GPB—15,000—22-8-32

10

7:-333

e-1

File No. | of 193 | General and Revenue Secretariat | evenue t | File No

Serial No.

38) The Reg[d] Post[n] has been heard in the High Ct & orders are reserved - Issue the draft letter ~~post~~ to the Reg[r] put up.

1827
11/8

To,

The Reg[r] H.Ct.

D.O. no. P. 769 d 12.8.33 Calling for the records in C.C. 950/32-33.

Sir,

The Reg[r] H.Ct.

D.O.no. Roc. 176/33-34 d 18.8.33 forwarding the records relating to C.C. 950/1933.

(Post vs Shama)

Subd with refs

TSD
23/8

TYPING SECTION
1 AUG. 1933
GENL & REV SECTT.

Sup A
14/8/33

~~Forwarded with compliments to the Comptroller for favour of~~ I learn that

38) there was some Correspondence betn the Comptroller & the Reserve Bank regarding this cheque for Rs 5750/-. Please put up a DO to the Comptroller (confl) requesting him to send the same for refce

1827
23/8/33

38) DO Put up
TSD 23/8

Issue today
1827 23/8

Issued no. P. 909 d 23.8.33

Sup A 23/8/33

WD 04

General and Revenue Secretariat. File No. of 193 .

Serial No.

From

The Comptroller

no. 5701 d. 28.8.33 forwarding copies of Correspondence between himself & the Mys. Bank.

Subj. with ref^ce to. for 28 Sept

150
30/8

(39) One N.S.Sharma who was an employee as clerk in the State Loan Section in the Office of the Comptroller - managed to get by means of a fradulent ~~xxxxx~~ misrepresentation a cheque in favour ~~of~~ of a bogus person named S.Srinivasan for Rs.5750. This cheque was issued by the Assistant Comptroller Mr.K.G.Dutt and was drawn on the Officer in ~~the Office~~ charge of the State Huzur Treasury which directed payment of the amount being made by means of a cheque on the Imperial Bank of India. On the strength of this spurious cheque this Sharma obtained a cheque from the State Huzur Treasury Officer which is marked Exhibit ~~as~~ P.17 in the criminal case. This cheque is dated 16th March 1932 and is drawn on the Imperial Bank of India, Bangalore. The cheque was crossed generally by the State Huzur Treasury Officer by means of two parallel diagonal lines on ~~the~~ 15 left hand side. ~~of the cheque which is marked as exhibit P.17.~~ It has been proved in the criminal case that Sharma after taking th: cheque forged an endorsement on its back in favour of h: wife, Mrs.N.S.Padmamma. This lady presented the cheque to the Mysore Bank through a letter dated 24th March

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31

March 1932-ebhibit P.18 where she requested the Bank to realise the amount of the cheque and out of the proceeds realised to place a sum of Rs.4,500 in the fixed deposit and to refund the balance to her. A credit slip exhibit P. 21 was accordingly made out in the Mysore Bank in favour of Padmamma . A fixed deposit receipt for Rs.4,500 and a cheque for payment of the balance of Rs.1250 was issued to her perhaps on the same day.

40 It is clear that since Sharma got this cheque by means of a fradulent misrepresentation and there after transferred it to his wife by means of a forged endorsement, Padmamma did not become the holder in due course of the cheque when she presented it to the Bank. Prima facie in such circumstances a Bank which takes such a cheque to realise the amount is guilty of conversion and is liable to the true owner viz., the drawer in this case i.e., the Government itself, unless the Bank can establish affirmatively that it collected the amount due under the cheque for a customer in good faith and without negligence, then in such circumstances the collecting Bank is given a statutory protection under Section 13 of the Negotiable Instruments Act.

(1914) 3 K.B. 356
(1875) L.R. 7 H.L. 75,
(1932) 2 K.B. 122 at page 148.

"Even this Section does not provide an absolute immunity to the collecting banker and unless he can bring himself within the conditions formulated by this Section he is left with his common law liability for conversion or for money had and received, in the event of the person from whom he takes the cheque having no title or defective title. The conditions are: (1) that the banker should act in

Serial No.

good faith and without negligence in receiving payment ~~xxxx~~ (2) that the banker should receive payment for a customer i.e., act as mere agent in the collection of the cheque and not on his own account as holder (3) that the person for whom the banker acts must be his customer and (4) that the cheque should be one crossed generally or specially to himself". (Bhashyam and Adiga Vth Edition page 485).

42 Now in this case though the good faith of the Mysore Bank may be presumed it is doubtful if they can claim protection under Section 131. In the first place there is nothing to show that Padmamma was a customer of the Bank. Evidence on this point has to be collected and I think it can be easily established that she had at the time of presenting the cheque "no account either deposit or current account or some similar relation to make her a customer of the Bank." Though the question as to who is a customer is a vexed question, it seems to be well settled that "a stranger who goes into a bank to get a cheque collected is not a customer of the bank."

(1901) A.C 414

(Bhashyam & Adiga page 495).

43 Again in this case the circumstance that Padmamma was a stranger to the bank and that she presented a cheque for a sufficiently large sum drawn by the State Huzur Treasury Officer clearly establishes a case in which the bank was bound to make proper enquiries before they took the risk of collecting the amount on her behalf. If the bank had only enquiried as to who this Padmamma was and ~~as to~~ what the occupation of her husband were they would have discovered that he was a clerk in the employ of Governmer

NOTE—Contn. Sheet.

and that too in the Comptroller's Office. This would have certainly put them on their guard because it is a well known recognised principle of banking that a bank should not take in without enquiry cheques drawn by a firm in favour of the third party and paid in by a person known to be an employee of the drawing firm or one closely related to such an employee." This principle has been well illustrated in the recent case of Savory & Co., Vs Lloyd's Bank reported in (1932) 2 Kings Bench, page 122. In this case certain cheques drawn by Savory & Co., were stolen by two of their employees named Perkins and Smith. Perkins had an account in one of the branches of Lloyd's banks and Smith opened an account in the name of his wife Mrs. Smith in another branch. The stolen cheques were drawn on the Midland Bank. Perkins and Mrs. Smith presented these cheques to the London Office of the Lloyd's Bank for being credited to their respective accounts at the branch office. This was done without enquiry as to who these Perkins and Mrs. Smith were and an action was brought by Savory & Co., against Lloyd's bank for the recovery of the amounts wrongfully paid under these cheques. Mr. Justice Roche before whom the action was tried held the bank liable only in respect of one cheque presented by Mrs. Smith on the ground that it was collected for her before she had opened any account with the respondent bank. In respect of the others, Justice Roche found the bank not neglegent and dismissed the suit. On appeal this decision was reversed by the Court of Appeal. Lord Justice Scrutton held that the Lloyd's bank was neglegent

Serial No.

in that the Branch Managers in opening the accounts in the name of Perkins and Mrs. Smith respectively had failed to make enquiries as to the name of Perkins' employers and the occupation of Mr. Smith. At page 135, the Lord Justice observes as follows:-

" While the Smith account was opened in the name of ' D.Cowie Smith, wife of David Smith,' no enquiry was made as to the occupation of David Smith or if he proved to be a clerk as to his employer. If these enquiries had been made and truthfully answered, and the Manager of Mrs. Smith's branch had seen the cheques, he would at once have been put on enquiry. In this case the bank said they need not inquire as to the occupation of the husband. If this is right, accounts in the names of the wives of dishonest clerks will become as popular, as they appear to be, in the case of fradulent bankrupts." Considering the danger to be guarded against, husband and wife are usually sufficiently one person to require the bank in opening the account to ascertain the occupation of the husband and if he is an employee the name of his employer.

On this point Lord Justice Lawrence says as follows: " One of the main rules acted upon by bankers is not, without inquiry, to accept cheques drawn by a company, firm, or principal in favour of a third party, tendered for payment into the private account of a customer known to be an employee of the drawer. This rule is admitted to be so elementary and so well known to all its managers and cashiers as to render its insertion in the bank's printed book of rules superfluous." The Learned Judge

NOTE—Contn. Sheet.

came to the conclusion also that in the circumstances of the case neither Perkins nor Mrs. Smith were customers of the City Office of the Lloyd's Bank and that consequently the bank was liable.

In a case- Ladbroke & Co., Vs. Todd (1914) 111 L.T. 43 a banker was held guilty of negligence towards the drawer of a cheque crossed "account payee only", if he opens an account for the person presenting the cheque and collects the money for it without making any inquiries. (See Byles on Bills page 36, note (p)).

Stillless can a banker without negligence open an account with a person who pays in a cheque so crossed without making inquiries as to the identity of such person and the payee.

On a careful consideration of the circumstances and the facts of the case I am of opinion that there is a good cause of action against the Mysore Bank for conversion of the cheque in question. The cheque was a crossed one. It was drawn by the State Huzur Treasury Officer. It was presented by a lady who had no account in the bank. She went to the bank only for the purpose of collecting these cheques and realising its proceeds. No inquiry was made as to who she was and who her husband was and how she came to be in possession of this cheque. Neither she nor her husband was the payee of this cheque but it was one fictitious person-S.Srinivasan. It is in evidence that certain of the Bank clerks knew the lady and also her husband but omitted to make any inquiries regarding this cheque which was for a sufficiently large sum. By the fact that nearly a quarter of the amount due under the cheque was paid by means of another cheque on the same day on which it was presented, it appears as though the Mysore Bank gave credit before they actually realised the amount from the Imperial Bank.. All these circumstances put to-

Serial No.

together make out a case of negligence which ~~disposes~~ disables the bank from claiming the statutory protection given under the law.

46) Submitted for perusal in the first instance As already ordered, paras 24 and 26 Supra, the Govt Advocate will be consulted and the case resubmitted for further orders.

Gen Secy) bnp 13/9/33

H Dmoer 13/9

mp 13/9/33

Sfr 15/9

15/9

15/9

UO 132-33 P 15-9-33.

47) Forwarded with Compliments to the Govt Advocate for favour of advice

Bnpsarao 15/9/33

GOVT. ADVOCATE'S OFFICE BANGALORE

Returned with compliments.

UO. No. 6KA/33-34 dt 1.11.33

48 The main point for consideration is whether the Mysore Bank can be proceeded against for recovery of

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31.

the

the proceeds of the cheque presented to it by Mrs.Padmamma now that it is clearly proved that the cheque was secured by committing an offence. The depositor is the wife of Mr. N.S.Sarma who was a clerk in the Comptroller's Office and the cheque was for a fairly heavy amount viz., Rs.5,750/- The Bank can claim protection only under Section 131 of the Negotiable Instruments Act. That Section affords protection to the Bankers only when they ~~are~~., in good faith and without negligence receive payments for a customer. In this case since a Hindu lady was for the first time presenting a Crossed Cheque for a heavy amount, it was the duty of the Bankers to have made due enquiries in order to ascertain who she was, and what her status in life was, and to have satisfied themselves that she was a genuine customer, capable of having such heavy deposits. That, the Bank seems to have failed to do.

11. Section 131 of the Negotiable Instruments Act corresponds to Section 82 of the English Act. The latest English Case on the subject is found in 1933, Appeal Cases (June Part), page 201, Lloyds' Bank VS. Savory & Co., This is a decision on an appeal from the decision reported in (1932) 2 K.B., 132. This English Case in which the Bank was held liable under similar circumstances strongly applies to the facts of the present case.

Mrs. Padmamma presented the cheque to the Mysore Bank on or about 24-3-1932 ~~and~~ took Rs.1,250/- from the Bank and left the balance as a Fixed Deposit for six months. She began borrowing on the security of the

Fixed

19

Serial No.

Fixed Deposit very constantly, from June 1932. The deposit was renewed for one year according to her letter dated the 24th September 1932 i.e., till 24th September 1933. In the meanwhile the Bank appropriated the deposit amount towards its dues after receipt of the Comptroller's letter intimating to the Bank the fraud connected with the cheque.

5th) I therefore think there are fairly good grounds for filing a suit against the Mysore Bank for the proceeds of the fraudulent cheque in question.

6th) Mr. Sarma is undoubtedly liable for the claim and his assets if any may be secured after filing a suit.

V. Nallayyaswami 2-11-33
Government Advocate.
31.10.1933

4th
1-11-'33

CSN.

7th) Submitted for orders. I think the Govt Advocate may be requested to issue a notice to the Bank calling upon them to pay the amount in question, before taking further action to file the suit. The notice of course has to be very cautious and should not disclose our case to the Bank in its entirety. The issue of a notice is however necessary.

2nd member X
Dewan ✓ 1/11/33
Thro Fin Secy

2-741
3/11

1-11-33

NOTE—Contn. Sheet.

Pol. 4 There is a

FINANCIAL SECRETARY
4 NOV 1933
No.

WD 70—GBPM—60,000—13-8-31.

20

1091/P

Law File No. 64 of 1933. General and Revenue Secretariat

prima facie case to proceed agst the Bank. A notice may be sent to first as suggested

JSM
3/11

DEWAN'S OFFICE
2951
4 NOV. 1933

MS
4-11-33

LTM
4/11.33.

55) Forwarded with compliments to the Govt Advocate for issue of a notice to the Bank of Mysore + for return of the file.

Mysore
6/11/33

Returned with compliments.

56) A Registered Notice has been issued this day to the Bank of Mysore, Ltd., Bangalore, and a copy of the same is enclosed herewith for information.

M Nageswara Rao
Government Advocate.
9.11.1933.

H.

57) Please issue the D.O to the Registrar, High Ct, returning the records. kept in the linked file.

MSP
7/11/33

Per Hy. for the Registrar of the Court of the High Court

Dy 974/33-34 dy 6.11.33

No 10866/33-84 dy 7.11.33

LTM
7-11-33

58) Supdt Press. To be sent in a sealed cover. Confl. mc

Issued no 12072 dy 7/11/33 (Encl. returned)

Civil Suit the Bank of Cochin 1/7/34. 21

[App. F. III—2

General and Revenue Secretariat — Law File No. 64 of 1933.

Serial No.

From,

The Govt. Advocate

No. 337 d 20.11.33 forwarding a copy of the letter dated 16th Nov 1933 received from Mr B Vasudevamurthy, Advocate on behalf of the Bank of Mysore Ltd.

59) This is a reply to the notice issued by the Govt as instructed in para 55 supra. It is stated that the bank has throughout acted bonafide, and that there is neither negligence nor departure from the usual course of business. The bank therefore is not prepared to accept any liability in the matter. The proposed suit may therefore be sanctioned.

Submitted for perusal, with ref^ce to para 55 supra.

15D 27/11

60) In para 7 of the reply notice, the Bank's advocate appears to admit that the Bank was bonafide holders in due course of the cheque in question - This negatives the theory of their having acted as mere agents for collection and consequently is one more ground why the Bank cannot claim protection under sec 131 of the Negotiable Instruments Act. (Vide para 41 supra)

61) As to the Bank being holders in due course, the law is that a forged indorsement conveys no title and it is

NOTE—Contns Sheet.

WD 70—GBPM—60,000—13-8-31

Civil Suit against the Bank of Mysore Ltd

22 V764

Law File No. 64 of 1933. General and Revenue Secretariat

doubtful how far the Bank can in the circumstances of this case succeed in this plea -

(62) The Govt Advocate has already been consulted & he is of opinion that a suit can be filed against the Bank for recovery of the proceeds of the cheque. It is desirable that the G.A himself be engaged for the conduct of this case.

Submitted for orders

(Gansey) BSP 22/11/33

(63) I agree.

(I Ismbee) 22/11/33

(64) I agree - Please also submit to the Dewan BSP 23/11/33

(Dewan) ks 24-11-33

24/11/33

BSP 24/11/33

No 24-11-33

25/11

A draft G.O is herewith put up for

DE 340 24 NOV 1933

GENE... 22 NOV 193... No.

2745 23

General and Revenue Secretariat — File No. 64 of 193 . — [App. F.-III—2

Serial No.

approval. A sum of Rs 450/- will be required by the E.A for purpose of stamps etc. The comptroller is to be requested to pay this amount to the E.A Subject to this being adjusted in due course.

Gen Secy
25/11/33.

Fin Secy

may be approved

I Member
Fin Secy
25/11.33

25/11/33

25/11

27.11.33

27/11

27.11

Asst
27.11 33

Dy. Secy. 889 / 33

Draft for issue.

28/11

Asst
28/11/33.

Issued

NOTE.—Contn. Sheet.

WD 0431—GPB—15,000—12-10-33

24

Law File No. 64 of 1937.

General and Revenue Secretariat

Serial No.

To,

The Govt. Ad
Comptroller to Govt Hindu Jaintseeth
G.O.no P. 2501-02 Law 64-33-3 dt 20th nov 1933
according sanction to file a Civil Suit
against the Bank of Mysore Ltd.

B Govt
2/11/33

Appendix F G—1]

SUBJECT.....

.....

.....

Section G.7

File No. 153-32

Urgent & Confd Serial No. 2

Diary No. of letter replied to 2812 R

No. R 5057 dt 24.3.33.

To The Compt.,

Sir,

With reference to your preliminary report No S.L. 2179 of the 1st inst on a fraudulent transaction in the State Loans Section resulting in a defalcation of Rs. 6100 (5750 + 350), I am directed to request that any submission on a detailed report ~~which may traverse~~ the following points;—

How the fraud occurred, what the procedure actually adopted was, whether there is any ~~inherent~~ defect in our rules or procedure (exposed), whether anybody's negligence ~~to which~~ rendered the fraud possible

Whether there was any one else privy to

General and Revenue Secretariat

( )

the 193 .

Date of issue 24/3/33

Signed by Mr. A. Subba Rao

List of enclosures.....

Copied by.....

Examined by.....

WD 0253—GPB—15,000—26-8-32

V

In transaction, the actual extent of the fraud, remedial steps proposed to be taken in future, and lastly, the result of a complete verification of all the similar transactions of interest payments.

How the payment was authorised without the production of the original bonds requires also to be explained.

It is not to also to be made clear when & how the Cheque books were & what exactly the duties of N & Sarma were.

Subj to appl

Very prompt action is necessary to recover the amount.

It should also be examined how far the L.H. Dy was responsible for the fraud

Dy

22/3.

22/3

21/3

No. 5057 / G.J-153-33-2 3

23rd March 3
24th

URGENT AND CONFIDENTIAL

To

M. Venkatasa Iyengar, Esq., M.A.,
Comptroller to Government, Bangalore.

With reference to your preliminary report No.S.L.2179 of the 11th instant on a fraudulent transaction in the State Loan Section resulting in a defalcation of Rs 6,100/- (Rs 5750 plus 350), I am directed to request the early submission of a detailed report on the following points:-

How the fraud occurred, what the procedure actually adopted was, whether there is any defect in the rules or procedure adopted, whether anybody's negligence rendered the fraud possible, whether there was any one else privy to the transaction, the actual extent of the fraud, remedial steps proposed to be taken in future, and lastly, the result of a complete verification of all similar transactions of interest payments.

How the payment was authorised without the production of the original bonds requires also to be explained.

Promptest action is necessary to recover the amount.

It should also be examined how far the State Huzur Treasury was responsible for the fraud.

I have the honor to be,
Sir,
Your most obedient servant,

AHB

for Financial Secretary to Government.

S.R.-2

G.7. 153-32-34

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. 2508/S.L. *Bangalore, dated* 1st May *1933.*

FINANCIAL SECRETARY
3 MAY 33
No.

From

M. VENKATESA IYENGAR, Esq., M.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

To

S. Shamanna, Esq., B.A.,
Financial Secretary to the Government
of Mysore, Bangalore.

FINANCIAL
3557
3 MAY 1933.
GENL & R. V. SECTT.

Sir, 2 : 2812 Rm 1/4

I have the honour to invite attention to my letter No. S.L.2179 dated 11-3-1933 regarding defalcation to an extent of Rs.6,100/- committed by N.S. Sarma, Accounts Clerk and to state that there was at the same time a payment of Rs.700/- which could not be traced to any claims, but that as it was not then clear that it was fraudulantly made, it was not included in the complaint to the Police. Further audit of the accounts has established that this payment also was fraudulent and made by the same clerk. The facts are as ~~follows~~ below:-

There is an entry dated 24-11-1931 in the register of payment orders written out by N.S. Sarma of a payment of Rs.700/- under interest on 7% Loan at State Huzur Treasury and date of payment has been shown as 26-11-1931. This entry bears the initials of Sarma and what appears to be the initials of Mr. K. Gurudutt Assistant Comptroller who was in charge of the work then. No case number or cheque number is shown and the paid voucher is also not available. In the State Huzur Treasury Registers the payment has been noted as interest bill of Sabjansaheb; in the Shroff's payment register, there is a signature of the payee in tamil. From our records, it is clear that no payment was due to any Sabjan Saheb. This is, therefore, a case of fraud and the total amount defalcated by Sarma comes to Rs.6,800/-.

How Cases Are ?

2. Sarma also attempted another fraud. The facts of this case ~~is~~ are as below:-

In the book of cheque forms there is a counterfoil of

of cheque No.84 for Rs.350, dated 10-3-1932 in favour of one B.S. Sheshadri drawn on Mysore District Treasury on account of interest on 7% Bonds. This foil is written out by Sarma and bears his initials. The corresponding cheque foil is not available. There is a corresponding entry in the register of payment orders in his handwriting. Neither of these entries is attested by the Officer. The counterfoil has been stamped "Cancelled" in rubber stamp, and the accounts do not show that any payment has been made on this account. As no payment was due to any person of this name on this account, this is a case of attempted fraud.

3. These cases were brought to my notice by the office as suspicious items in the first instance, but I did not mention them in my report, as their fraudulant nature was not established.

4. The above cases have been placed in the hands of the Police for investigation.

5. The audit of the accounts of the 7% Loan for which I arranged, is almost complete and no other cases of fraud have been noticed. I shall send a detailed reply to your letter No.Fl.5057/G.F.153-32-2 dated 23/24-3-1933, after receipt of the audit report from Mr. M.A. Rangachar, Deputy Comptroller, who is examining the Accounts.

I have the honour to be,

Sir,

Your most obedient servant,

M. Venkatasubbaiyangar

Comptroller.

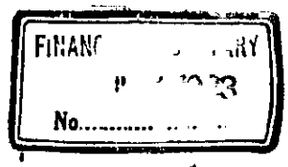
S.S.

CONFIDENTIAL.

G.F. 153-32-46

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. 65 /S.L. Ef. Copies of two letters. Bangalore, dated 7th July 1933.



From M. VENKATESA IYENGAR, Esq., M.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

Reply Today

To

The Financial Secretary

to the Government of Mysore, Bangalore.

Sir,

Regarding Government amounts got by fraud by N.S.Sarma late clerk of the State Loan Section of this office.

I have the honour to forward herewith a copy of the report of the Inspector of Police, "A" Division, sent to this office by the District Superintendent of Police, Bangalore City with his D.O.No.I.C.609/33 dated 5-6-1933 and letter No.Ic.609/32-33 dated 4-7-1933, regarding assets and property belonging to N.S.Sarma.

It may be possible to recover some amount by filing a civil suit against Sarma. There is a pronote for Rs.400, in one case only and in two other cases, the parties concerned have given written statements for having received the money and debit vouchers of the Bank of Mysore in support of the statements are available. No document is forthcoming in the case of the larger amount of Rs.1,350 and there is a balance of Rs.300, in the Bank Account of accused's wife. He is stated to possess a house worth Rs.150, at Channarayapatna and site at Mysore worth Rs.100, in addition to a sum of Rs.25-9-0 standing to his credit in the S.B. Account at the Mysore Bank, Mysore.

I request that arrangements may kindly be made to file a civil suit against Sharma with a view to recover whatever amount can be possibly recovered.

I have the honour to be,
Sir,
Your most obedient servant,

M. Venkatesa Iyengar
Comptroller.

S.S.

7.7.33.

Report of the Inspector of Police "A" Division, sent to the Comptroller to the Government of Mysore, by the District Superintendent of Police, Bangalore City with his D.O.No. I.C.608/33 dated 5-6-1933.

With reference to I.C.609/32-33 dated 31-5-1933, I beg to report that the accused N.S.Sarma, informed me during the course of investigation that he had utilised the amount of Rs.5750, as follows:- To Mr. Shamanna, retired Municipal Overseer. Rs.1350.

To N.S.Venkataramaniah, Clerk, Bank of Mysore, (on an ondemand pronote.) 400

To G.Doraswamy Iyengar, Son of Gopala Iyengar, Inspector of Police, Heggadadevankote. 350.

Of these the ondemand pronote executed by N.S.Venkataramaniah is in the case records in the City Magistrate's Court. Mr. Shamanna has not executed any document. Messrs. G. Doraswamy Iyengar and G. Srinivasa Iyengar has both given written statements admitting the fact of having received the above amount and there are debit vouchers of the Bank of Mysore also in support of the above statements. These vouchers are also in the City Magistrate's Court. In addition to this there is a balance of nearly Rs.300, in the Mysore Bank in the name of his wife.

Properties. - He has got a house worth about Rs.150, in Chennarayapatna and he has recently purchased a site for Rs.100, in Vantikoppal extension in Mysore City.

Beyond this there seems to be nothing else, belonging to the accused N.S.Sarma.

"Copy".

Superintendent, S.L. Section.

7.7.33.

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Letter No. Ic.609/32-33 dated 4-7-1933 from the Superintendent of Police, Bangalore City, to the Comptroller in Mysore, Bangalore.

In ~~addition~~ advertance to your letter No.3124/S.L. dated 24-6-33 enquiring the assets of N.S.Sarma , I have the honour to state that it is reported that his S.B.Pass Book on the Bank of Mysore, Mysore shows a balance of Rs.25-9-0 at ~~the~~ his credit.

Further Mr. G. Sreenivasan a G.Sreenivasa Iyengar owes the accused a sum of Rs.350.

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"Copy".

Superintendent, S.L. Section.

7.7.33.

In the Court of the City Magistrate, Bangalore. criminal case number 950 of 32-33 dated the 29th day of May 1933. Present. S.Narayana Rao, Esq.,M.A., Hons., City Magistrate, Bangalore.

....

Complainant		Accused.
Government	Vs.	N. S. Sharma.

Sections 420, 468 and 477 A. I.P.C.

JUDGMENT.

A charge sheet was placed before this Court on 26-3-1933 against the accused who was employed as assistant auditor in the Mysore City Municipal Office for offences under Sections 420, 468, and 477(A) Indian Penal Code. The investigation of the Police had not been completed on that day and the accused was removed to the Central Jail on the date of the next hearing also viz., 8-4-33. The investigation was said to be not complete and the final charge sheet with a supplemental list of witnesses was submitted to the Court on 31-4-33 on which date itself the enquiry was commenced. It may perhaps be mentioned at the outset that the accused was employed as a clerk in the State Loan Section in the office of the Comptroller to the Government of Mysore at Bangalore City during the period during which the offences are said to have been committed viz., from the 10th to the 24th of March 1932. The charges were that the accused while so employed managed to get a cheque (Exhibit P3) in favour of a Bogus person for Rs.5750 passed by making fake entries in the records of his office and on the strength of that spurious cheque which was a pay order to the State Huzur - Treasury Officer obtained a cheque (Exhibit P17) from the State Huzur Treasury Officer on the Imperial Bank of India, Bangalore in favour of that bogus person and realised the amount through the Bank of Mysore after forging the name of "S.Srinivasan"

the bogus person on Exhibit P17 and endorsing it to his wife N.S.Padmamma.

2. Ten witnesses were examined for the prosecution. Mr. Venkatesiengar (P.W.1) Comptroller to the Government of Mysore to speak to his complaint to the Police (Exhibits P1 and p2 on which the F.I.R. in the case was given Mr.Y.Subrahmanyam (P W2) Assistant Comptroller in permanent charge of the State Loans Sections to speak to the records and procedure, the cashier of the State Loans Section (PW3) to indentify the accuseds writing and signature and speak to the spuriousness of the entries made by him, the Superintendent of the Section (PW4) to speak to the exhibits and facts of the case, Mr.M.S.Ramachandra Rao, the State Huzur Treasury Office (P.W.6) and his officials P.Ws 5 and 7 to speak to exhibit P17 having been issued on the strength of the cheque (Exhibit P3) issued by the Assistant Comptroller Mr.Guru Dutt (P.W.11) who happened to be in charge of the State Loans Section on the date of the issue of Exhibit P3 viz., 10-3-32 during P.W 2's absence on casual leave-one Narayanasami of the State Insurance office to identify Exhibit P18 the letter he had typed for the accused asking the Mysore Bank to realise the amount of Exhibit P17 and the two officials of the Mysore Bank P.Ws 9 and 10 to speak to the transactions of the accused and his wife in respect of the money realised on Exibit P17.

3. P.W1 deposed that as soon as he got information of the unauthorised payments obtained. he sent two persons to Mysore to get the accused. They brought him by the evening train on 10-3-33 and took him to his (P.W1's) house the same night. That was the first time witness saw the accused. P.Ws 2 and 11 were there and witness asked P.W2 to state to the accused the facts of the case which were briefly as follows. Government had paid off their

7% loan a little over a year ago and accounts were being closed. Two payments one of Rupees 350 and another of Rs.5750 had been made to one S.Srinivasan whose name could not be traced in the list of persons to whom payments were due. The cheque for Rs.350 was dated 20-2-32 and had been cashed in the State Huzur Treasury the same month. The voucher received from the State Huzur Treasury was not traced but the counter foil of the cheque was available in the book of cheque forms in use at that time. The second charge for Rs.5750 with which we are concerned in this case was dated 10-3-32 drawn on the State Huzur Treasury for payment by cheque on the Imperial Bank of India, Bangalore. This cheque (ExhibitP3) was found in the office among the vouchers but its counter foil was missing from the book of cheque forms (ExhibitP4) and it could be seen that it had been torn off. Exhibit P3 appeared to have been prepared by the accused who was their accounts clerk in the State Loans Section and purported to be in payment of interest on 6¼% State Loan bonds. No papers or vouchers could be traced with with which the cheque (Exhibit (3) could be connected. When the above facts were put before the accused by P.W2 and the accused asked to explain, the accused readily and of his own accord explained that S.Srinivasan was a fictitions person, that he had made out the cheques in the name of that fictitions person and got the officers signatures to the cheques and he had cashed the 1st cheque and got the money himself and got the money by transfer to the Mysore Bank on the second cheque (i.e., Exhibits (~~xxxx~~ P3 and P17) P.W1 sent Exhibit P1 to the Superintendent of Police the same night together with the accused and followed it up by Exhibit P2 the next day.

P.W2 said he was on casual leave on 10-3-32 and it was on the 6th or 7th March 1933 he came to know of the facts of this case. Exhibit (3 (cheque number S.L.83 for Rupees 5750) purported to be drawn in favour of one "S.Srinivasan" and payment of interest on 6¼ ~~State Loan~~

State Loan Bonds but the cheque form had been taken out from the book of cheque forms set apart for the discharge and conversion of 7% loan bonds. The counter foil of Exhibit P3 was not found in the cheque book (Exhibit P4) and appeared to be torn off from the book on the back of the counter foil of cheque number 82 there was a smudge of ink (Exhibit P4(a) correspondingly to the writing. That must have been on the next counter-foil i.e., number 83. Exhibit P3 purported to be signed by Mr.Guru dutt and the signature was very much like his. The body of Exhibit P3 appeared to be in the accused's writing. Witness knew the accused's writing for four or five years. Exhibit P4 the cheque book used to be in the custody of the case worker and in this case was in the custody of the accused as he was the case qorker. Before cheques were written up the particulars had to be written in the register of pay orders issued. Exhibit P6 Exhibit p6(a) was the entry relating to Exhibit P3 and witness said that that also appeared to be in the accused's writing. Exhibit P6 pertained to the discharge of 7% bonds and there was no entry in it pertaining to 6¼% bonds. The accused had initialled at the place meant for the initials of the Superintendent ~~km~~ Exhibit P3(a). No payment was due to any "S.Srinivasan" either on 6¼% bond or 7% bond whether on account of interest or otherwise. There was a column in the counter-foils for noting the case number to which the cheque pertained. In the counter foils of cheque number 82 (Exhibit P4b) the case number was noted as Dis 26 and that counter foil had been written up by the accused and initialled. Counter foil number 82 was not also genuine on the back of counter foil number 82 there was the figure 26 inverted. Similarly counter foil of cheque number 84 (Exhibit P4c was in accused's writing and initialled by him and Dis number 26 was likewise noted there on. Exhibit P4c had been cancelled. It was a fraudulent entry and an attempt which had not

not materialised. There was no bond corresponding to the payment on Exhibit P3 in case number 26 and none in favour of "S.Srinivasan". If payments were to be made outside the State, cheques were drawn in the form of a pay order on the State Huzur Treasury and a cheque on the Imperial Bank asked for. The pay order was sent to the Treasury with the case-worker generally with a requisition from the Superintendent and a cheque obtained. The cheque so obtained had to be given to the Superintendent who had to get it entered in the register of valuables. It was then entered in the despatch register of valuables and sent by registered post to the party. Payments on 6¼ bonds was being dealt with by others and not by the accused. The initials Exhibit P7 on the back of the counter-foil of Exhibit P7 were the accuseds. Witness said that some counter foils in Exhibit P4 did not bear Superintendents initials and the accused had done so himself. In Exhibit P6 the entries relating to the cheques 82-83 and 84 were the very last and there was no occasion to use Exhibits P2 and P6 thereafter.

P.W3 had been working in the Comptroller's Office for 12 years and knew the accused for seven or eight years. The latter was an accountant and witness was familiar with his hand writing The body of Exhibit P3 and Exhibit P6(a) were in the accused's hand writing and the initials at Exhibit P3(a), Exhibit P6(b) and Exhibit P7 were accuseds. Witness used to receive all 6¼% bonds which were being entered in the register of valuables Exhibit P8. There was no entry in it relating to any 6¼% bond of S.Srinivasan. No. payment of interest on bonds would be authorised without the bonds being received in the office.

PW4 had been Superintendent of the State Loans Branch for 3½ years and knew the accused who had been dealing with 7% bonds in the early part of 1932. Exhibit P8 and P6 had to be

written up when cheques were made out and witness had to scrutinize the bonds registered and cheques and submit them to the Assistant Comptroller in charge who would also examine the bond and registers and sign the cheques. Exhibit P3 and Exhibit P6a were in accuseds writing and the initials at Exhibit ~~P3~~ P 3(a) and Exhibit P6b were also accuseds. In the usual course exhibi P3 and P6(a) should have been initialled by the witness but they did not bear his initials. It was usual to send cheques or pay orders to the Treasury without a requisition slip in urgent cases. This witness was definite that the signature in Exhibit P3 was Mr.Gurudutt's. Where were no bonds in - favour of " S. Srinivasan " and Exhibit P8 and P9 had no - such entries. If the cheque had been sent out it must have been entered in Exhibit P10- the book of forwarding note -- forms. Exhibits P4 and P6 were in accuseds possession and and they were meant exclusively for 7% bonds. No claims either for principal or interest on 6¼ or 7% bonds had been received by

"S. Srinivasan" nor was such persons name to be found in Dis. case number 26 (Exhibit P.11) which contained only a list of 7% bonds purchased by Government. The signature on the back of P.12 and P.16 (Mysore Bank debit slips) accused's.

P.W.5 wrote the cheque (Exhibit P.17) in the State Huzur Treasury on the authority of Exhibit P.3. i.e., S.L. number 83 which was noted on Exhibit P.17(a) the counterfoil of Exhibit P.17. The accused brought Exhibit P.3 to him. After writing Exhibit P.17 he submitted with Exhibit P.17(a) to P.W. 7 the Head Accountant who had initialled both witness also initialled them at Exhibit P.3(b) Exhibit P.17(b) and Exhibit P.17(c) and and made initials on Exhibit P.3. After the Treasury Officers (P.W.6,8) signature witness obtained accused's (Exhibit P.7) in such cases separate covers of requisition were not always recovered from the Comptroller's Office. The accused had come with similar cheques in the past. P.W.6 the State Huzur Treasury Officer, who held that office since 1929 said that the signature in Exhibit P.3 was Mr. Gurudutt's (P.W.11) after referring to the specimen signatures book he had brought. He also said that he was quite familiar with P.W. 11's signature. In pursuance of Exhibit P.3 witness signed and issued Exhibit P.17. He had initialled Exhibit P.17(a) and Exhibit P.3.

P.W.7 the Head Accountant of the Treasury corroborated P.Ws. 5 and 6 witness had initialled Exhibit P .17 at Exhibit P.17(d) and the counterfoil exhibit P.17(a) at Exhibit P.17(c) and before initialling he checked it with Exhibit P.3 which he had initialled at Exhibit P.3(c).

P.W.8 had typed Exhibit P.18 for the accused. It is a letter to the Mysore Bank signed by accused's wife giving instructions for realising the amount of Exhibit P.17 viz., to place rupees 4,500/- in fixed deposit for six months in her favour and to refund the balance. The accused had brought a draft and ~~initialled~~ witness typed it in his office with the office machine. The investigating officer had asked him to type Exhibit 17 with the

same typewriter and Deputy Secretary of the State Insurance Office had worded it.

P.W.9 who had been in the Loans Section of the Mysore Bank since 1926 received Exhibit P.18 on 24th March 1932 along with Exhibit P.17 as an enclosure Exhibit P.17 was sent to the Imperial Bank and the amount realised by credit. Exhibit P.20 being the transfer voucher slip. The endorsements P.17(b) (said to be by Srinivasan making it payable to Padmamma) and Exhibit P.17(g) (signature of S.Padmamma) were those which he received Exhibits P.17 and P,18 vouchers (Exhibit P.21) showed the disposal of the amount, rupees 4,500/- being placed in fixed deposit in Padmamma's name (Exhibit P.22 was the fixed deposit receipt) and a pay warrant being issued for rupees 1250/- (Exhibit P.23). Exhibit P.23 was cashed by one B. Srinivasiyengar the endorsee from Padmamma, Exhibit P.22 had been given to Padmamma in the usual course but she surrendered it as she wanted to draw against that receipt on the security of the fixed deposit. She borrowed several sums on pronotes Exhibits P.24 to P.26. Exhibits P.24(a) and P.36(a) were the corresponding debit bills and Exhibit P.37(1) to Exhibit P.37(13) were applications for the loans on Exhibits P.33 to P.36 the endorsements were in favour of the accused and exhibits P.33(a) to P.36(a) showed that the accused had drawn the amounts concerned. Exhibit P.32(a) showed that both accused and his wife had received the amount. Exhibit P.38 was the specimen signature card of Padmamma and Exhibit P.39 was the letter dated 24-9-32 in which she wanted the fixed deposit to be renewed for one year. The Bank had sent rupees 300/- in currency notes to her on 19-12-1932 and Exhibit P.40 was the carbon copy of the ledger showing her account from which it is seen that on 28th March 1933 the sum at her credit was Rs.215-7-0.

P.W.10 was loans clerk in the Mysore Bank for five years and he knew accused and his wife N.S.Padmamma who

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drew money on pronotes exhibits P.24 to Exhibit P.36. These pronotes and debit slips (Exhibits P.24(a) to Exhibit P.36(a) had been written by witness Padmamma came to the Bank many a time with the accused and some times with others. The accused was with her when she signed Exhibits P.32 to Exhibit P.36. The monies were drawn by the accused who had signed Exhibit P.32(a) to Exhibit P.36(a) at Exhibits P.12 to P.16.

Agreeing with the Public Prosecutor who conducted the prosecution that a prima facie case had been made out under each section with which the accused had been charged and the accused was examined to see what he had to say with regard to the evidence let in by the prosecution against him. He stated that what all the prosecution witnesses was true and promised to fill a statement. He however changed his mind immediately and made an oral statement of his domestic and pecuniary difficulties, such as illness and death of two wives in quick succession followed by his third marriage and his mother's death all of which meant expense far beyond his means and stated that he had made use of the money realised by the cheque in question to meet those commitments.

There was sufficient evidence to show that the accused had obtained Exhibit P.17 from P.W.6 by presenting Exhibit P.3 which he had prepared himself in favour of a fictitious person after making the false entry (Exhibit P.6(a)) in the Register Exhibit P.6 and to which he had managed to obtain P.W. 16's signature and that he had forged the same of "S. Srinivasan" on Exhibit P.17. Charges were therefore framed against the accused for offences under Sections 420, 468 and 477, Indian Penal Code and which the accused pleaded guilty and prayed that in view of the pitiable circumstances he had narrated and the fact that this was his first offence he might be leniently treated.

Though the accused had pleaded guilty to all the

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charges his plea of guilty to the charges under Section 420 Indian Penal Code was treated as a plea of not guilty and it is found that it had not been completely proved and the accused asked if he wanted to further cross examine the prosecution witnesses already examined only P.Ws. 2-3 and 4 were further cross examined and the prosecution examined P.W.11 Mr. Gurudutt who was in temporary charge of the State Loans Section on the day Exhibit P.3 was issued and whose signature is found in Exhibit P.3. He deposed that the accused was attending to the preparation of cheques like Exhibit P.3. He thought that the entries in the body of Exhibit P.3 were written by the accused. Those cheques were signed by the Assistant Comptroller in charge and the signature in Exhibit P.3 over the words "Assistant Comptroller" closely resembled his (witness). He could not be positive at this distance of time but looking only at the signature he had no reason to doubt it. Continuing he said that it was possible he might have signed it but he did not remember the circumstances in which he might have signed it. On 10-3-32 if any cheque had to be signed he was the officer to sign them. In cross examination witness said that there was nothing on the face of it to say he had not signed it. He always signed like it.

The accused was again examined and he had nothing to say. He had no defence witnesses to be examined.

From the evidence set forth in the preceding paragraphs it has been clearly established that the accused made out Exhibit P.3 in favour of "S.Srinivasan" a bogus person to whom no payment was due. The entry Exhibit P.6(a) was a false one. The accused has not obtained the Superintendent's initials either in the Register Exhibit P.6 or at the prescribed place in Exhibit P.3 and had managed to get the signature of P.W.11 for Exhibit P.3. A perusal of Exhibit P.6 shows that the Assistant Comptroller and the Superintendent have not always attes-

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attested the entries and the accused seems to have taken advantage of that ~~Exw~~ P.W.4 has admitted that it was the practice for the accountant himself to initial the cheques at the place expressly set apart for the superintendent's initials, during the Superintendent's temporary absence. P.Ws.2-3 and 4 and also 5 and 7 have said that it was not the practice to send a forwarding note or requisition to the Treasury when cheques or pay orders of the nature of Exhibit P.3 were sent and this practice, in correctness of which cannot and need not be detemined here, also seem to have facilitated the work of the accused who had no difficulty in getting Exhibit P.17. There is no evidence to show that the several other cases, cheques were issued by the Treasury without any forwarding note or requisition.

There seems to be little doubt regarding the signature of P.W.11 on Exhibit P.3, P.W.11 has said that it closely resembles his, it might be his and looking at the signature only he had no reason to doubt it. There is no suggestion that it was a forged one. P.W.6 the State Huzur Treasury Officer who was familiar with P.W.11's signature and had his specimen signatures was positive that it was his signature P.Ws. 4 and 5 have also said that the signature was P.W.11's and P.W.1 the Comptroller deposed that the accused had admitted to him the very first day that he had obtained the officers signature to Exhibit P.3. The accused had admitted the truth of all that has been deposed by the prosecution witnesses.

There is also conclusive evidence for the body of Exhibit P.3 and the entry Exhibit P.6(a) being in the accused's writing and there is little doubt of "S.Srinivasan's" name having been forged by the accused on Exhibit P.17 at Exhibit 17(b). The subsequent transaction with the Mysore Bank have also been amply proved and evidence shows that the accused has carried on the

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transactions in his wife N.S. Padmamma's name and that he was personally present on some occasions when money was drawn. Dishonesty and fraud have been imputably established by evidence and on top of it all the accused he pleaded guilty to the charges.

In these circumstances I convict the accused for offences under Sections 420, 468 and 477(A) Indian Penal Code and sentence him to one year's simple imprisonment on each of the three counts, the sentences to run concurrently. I have refrained from imposing a fine as more than the amount deposited in the Mysore Bank has been drawn as loans on the lieu of the fixed deposit of rupees 4,500/- and there seems to be no likelihood of recovering if a fine is imposed here.

The investigating officer Mr. Dastagir has set about his work with compendable promptitude and investigated the case in a very satisfactory manner.

In open Court.

Sd. S. Narayana Rao

City Magistrate

29-5-1933.

" C O P Y ".

For General Secretary to Govt.

Agr/2

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

Diary No. of letter replied to .....

90 / 71 + 155 / P

General and Revenue Secretariat

( )

the 193

Date of issue 13/7/33

Signed by .....

Confidential

No P 243

To The District Magistrate

Bangalore

Sir,

I am directed to request you to obtain and send at a very early date for the information of Govt the records in C.C. 950 of 32-33 on the file of the City Magistrate's Court Bangalore (Govt vs Sharma), which was disposed of on 29th May 1933.

I have etc

List of enclosures .....

BNP 13/7 For Secy.

Copied by ..... 13/7/33 Issue at once to Sandhu House

BNP 13/7/33

Examined by .....

WD 71—GPBM—40,000—20-7-31.

n all future communications please quote—
No. J1-60/33-34.
Enc.

OFFICE OF THE DISTRICT MAGISTRATE,
BANGALORE DISTRICT.

Dated, Bangalore, the 17th July 1933.

FROM

K.V.Anantaraman. Esqr., B.A.,
District Magistrate,
Bangalore District.

GENERAL SECRETARIAT
19 JULY 1933
No. P.243

To

S.N.Appanna Iyengar, Esqr., B.A., B.L.,
General *Secretary,*
to the Government of Mysore.
Bangalore.

SIR,

Subject :—

19/7/33 With reference to your letter No.P.243 dated 13-7-33 calling for the records in C.C.950/32-33 on the file of the City Magistrate, Bangalore(Government Vs. Sharma), I have the honour to state that the records have been submitted to the High Court in connection with a reference under Section 438 of Criminal Procedure Code for enhancing the sentence awarded on the accused.

I have the honour to be,
Sir,
Your most obedient servant,

K.V. Anantaraman

District Magistrate,
Bangalore District.

23

CONFIDENTIAL.

GENERAL & REVENUE SECRETARIAT,

D. O.

Dated, Bangalore 11th Aug. 1933.

No. P 732

Dear Mr. Venkatarangaiyengar,

It is learnt that the records in C.C. 950 of 32-33 (Government -VS- Sharma) on the file of the City Magistrate's Court, Bangalore, are now before the High Court in connection with a reference made by the District Magistrate, for enhancement of sentence, I am desired to request that as soon as orders are passed on the reference, the said records may kindly be sent to Government for reference and return, since they are required for purposes of finding out the Civil liability for the amount misappropriated.

Yours sincerely,

P. M

24

To

S. Venkataranga Iyengar, Esq., B.A., LL.B.,
Registrar, High Court of Mysore, Bangalore

K.M.R.2/11-8.

25

Appendix F G—1]

SUBJECT .....

.....

.....

General and Revenue Secretariat

( )

the *193*

Date of issue 12/8/33

Signed by [illegible]

List of enclosures .....

Copied by .....

Examined by .....

Section

File No.

Serial No.

'D 739'

Diary No. of letter replied to .....

No. Confidential

To Dear Mr Venkatarangaiyangar,

I am desired to request
It is learnt that
you to kindly send for reference
and return the records in
CC 950 of 32-33 (Govt vs Sharma)
on the file of the City Magistrate's
are
Court, Bangalore, now before
the High Court in connection with
made by
a reference from the Dt Magte, Blre
for enhancement of sentence.
I am desired to request that
as soon as orders are passed
on the reference, the said records
may kindly be sent to Govt
for reference and return, since
if they are required for purpose
of examining finding on

the Civil liability for the
~~the keeps and means for recovery~~
~~of~~ the amount diverted misappropriated

Yours Sincerely

DMP
11/8

S. Venkatāvanda Iyengar Esq BA BL
Registrar, High Ct.

Confidential.

D. O. No Roc: 176/33-34.

Enc: One copy of order & Records in a separate bundle.

HIGH COURT OF MYSORE, BANGALORE.

Dated: 18th August 1933.

Dear Mr. Jaya Rao,

As required in your D.O. No.P.739/ dated 11th Instant, I am desired to send herewith the entire records in C.C.No.950 of 1932-33 (Government--VS- Sharma) on the file of the City Magistrate's Court, Bangalore. The records may kindly be returned, when done with.

(Kept here.) Patrick Reply 22/8/33

A copy of the order of this court in Criminal Revision Case No.4 of 1933-34 (Government--VS- Sharma) enhancing the sentence passed on the accused by the City Magistrate, Bangalore is also herewith sent for the information of Government.

Yours sincerely,

S. Venkataranga Iyengar

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Thursday the 17th day of August 1933

PRESENT

Mr. P. MAHADEVAYYA, OFFG: CHIEF JUSTICE,

And

Mr. Justice K. SHANKARANARAYANA RAO.

Criminal Revision Case No. 4 of 1933-34.

In the matter of a reference by the District Magistrate of Bangalore received with his No. J.160/33-34 dated 14th July 1933 in the case of one N.S. Sarma, accused, in Criminal case No. 950 of 1932-33, on the file of the City - - Magistrate, Bangalore, bringing to the notice of this court the gross inadequacy of the sentence of one year's simple imprisonment (on each count to run concurrently) passed on the accused by the above said Magistrate, for offences under Sections 420, 468 and 477 (A), I.P.Code, and submitting the records with a recommendation for enhancement of sentence.

Heard:- Mr.A.R. Nageswara Iyer, Government Advocate for Government

Accused - in person.

(Under custody - Prisoner No.4241, Central Jail, Bangalore.)

O R D E R

29

O R D E R.

This is a reference made by the -- District Magistrate, Bangalore, under Section 438, Criminal Procedure Code. The accused who was a clerk in the State Loan Section in the Comptroller's Office, Bangalore, deliberately made false entries in the office records and cleverly -- managed to get a cheque (Exhibit P.3) for a sum of Rs. 5,750/- in favour of a bogus person -- S. Srinivasan. On the basis of the above cheque the accused fraudulently obtained a cheque from the State Huzur Treasury Officer (Exhibit P.17) on the Imperial Bank of India, Bangalore, in favour of the bogus person, viz., S.Srinivasan and realised the whole amount, viz., Rs. 5750/- through the Bank of Mysore by forging the name of S. Srinivasan.

The accused was charge-sheeted by the Bangalore City Police under Sections 420, 468 and 477 A, Indian Penal Code, and was tried and convicted for the offences under the above Sections by the City Magistrate in C.C. No.950/32-33. But the sentence awarded is only one years' simple imprisonment on each of the three counts, the sentences being directed to run concurrently, and the District Magistrate is of opinion that the sentence awarded is grossly inadequate. On the receipt of the reference, notices were issued to the Government Advocate and to the accused who was allowed to appear in person before us as

desired

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desired by him. We have heard the Government Advocate and also the accused and examined the records of the case, and we are distinctly of opinion that the sentence awarded by the City Magistrate is inadequate considering the gravity of the offences and the circumstances under which the accused has deliberately cheated the Government and the officers, who had naturally placed trust and confidence in him.

This court has laid down in 29 Mysore Chief Court Reports, page 73, that the offence of Criminal breach of trust of Government monies by a Government servant merits a long term of imprisonment, which should ordinarily be rigorous and not simple, and in a recent case reported in 38 Mysore High Court Reports, page 272, the accused person was sentenced to 6 month's - - rigorous imprisonment under Section 477-A., - Indian Penal Code, although the amount temporarily misappropriated in connection with the said offence was only Rs. 31-2-5.

The reasons given by the City Magistrate for awarding only simple imprisonment for one year in such a serious case are not of a convincing character, and the fact that the accused was an official in Government service, cannot be deemed to be a justification for taking such a lenient view of the case. In the well known English case of Rex V.Bottomley, the accused was a Member of Parliament and was convicted of fraudulent conversion of monies and sentenced to seven year s' penal servitude. It was

strongly

strongly contended on his behalf in appeal, that the above punishment of the accused, having regard to his position, would fall very heavily upon him and that it would be his ruin. The court of criminal appeal rejected such a contention and declined to reduce the sentence and drew attention to the following observations of Channell, J., in Rex V.Cargill (77 J.P.page 348) on the point :-

> "Further the ground of the appeal made to me does not seem right. The appeal was made solely on the ground of the appellant's position in the town. It is very desirable if it can be done, to sentence a man in a good position in -- exactly the same way as another in a more humble position. It is true that the same sentence is far harder on the former, but then the offence of a man in that position is much worse; he ought to have known better."
>
> The Law Times Reports, Vol.127, page 847, at page 852.

There are no extenuating circumstances in this case and each of the three offences admittedly committed by the accused is sufficiently -- serious, and we agree with the opinion of the District Magistrate that a deterrent sentence is called for under the circumstances of the case. We therefore accept the reference and sentence the accused to rigorous imprisonment for two years on each of the three counts, the sentence to run concurrently, and we further award a sentence

of

of Rs. 1000 (Rupees one thousand) fine on the accused and directing him to undergo 6 month's' rigorous imprisonment in case of non-payment of the said fine.

sd/- P. Mahadevayya,
Chief
Offg. JUSTICE.

sd/- K.Shankaranarayana Rao,
Offg. JUDGE.

"Copy"

Registrar.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

CONFIDENTIAL.

Dated, Bangalore, 23rd August 1933.

No. P. 909

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Comptroller to Government,

Bangalore.

Sir,

With reference to the correspondence ending with your letter No. 65 dated 7th July 1933 and your un-official note No. 163/S1 dated 19th July 1933, regarding the proposed civil suit against N.S.Sharma for recovery of the amount ~~got by fraud~~ misappropriated, I am directed to request that the correspondence if any between yourself and the Mysore Bank regarding the cheque for Rs.5750 may kindly be sent for reference and return.

I have the honour to be,

Sir,

Your most obedient servant,

For General Secretary to Government

TSD

TSS.

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the 193

Date of issue 5/1/33

Signed by acd/an unofficial note dated No 163/SL 19-7-33 / Mr. N.R.J. Rao

List of enclosures.....

Copied by ISD 23/8.

Examined by.....

Confidential

Section

File No.

Serial No.

No. P-909/-

To

The Comptroller to Govt

Sir,

With reference to the Correspondence ending with your letter no. 65 dated 7.7.33, re: the proposed Civil Suit against Mr. Shama for recovery of the amount got by fraud I am directed to request that the Correspondence if any between yourself and the Mysore Bank regarding the Cheque for Rs 5750/- may kindly be sent for reference and return.

DNP 23/8 I have seen for Genl Secy

712

1091
P 3385

CONFIDENTIAL.

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. 520 /S.L. *Bangalore, dated* 28th August 1933

From

M. VENKATESA IYENGAR, Esq., M.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

To

GENERAL SECRETARY
29 AUG. 1933
No P 10

The General Secretary to the Government
of His Highness the Maharaja of Mysore,
Bangalore.

Sir,

As desired in your letter No.P. 909 dated 23-8-1933 marked confidential, I have the honour to forward herewith copies of the following correspondence between me and the Mysore Bank, Bangalore, regarding the cheque for Rs.5,750/- fraudulently obtained by N.S.Sarma, former clerk of the State Loan Section of this office.

I have the honour to be,

Sir,

Your most obedient servant,

M. Venkatesa Iyengar

Comptroller.

Ref 4th 29/8 XX PPP 29/8

1. Letter No.2177/S.L. dated 11-3-1933 from the Comptroller, Mysore Government to the Bank of Mysore, Ltd, Bangalore.
2. Letter No.401 dated 13-3-1933 from the Mysore Bank, Bangalore to the Comptroller, Mysore Government.
3. Letter No.480 dated 28-3-33 from the Mysore Bank, to the Comptroller, Mysore Government.

S.S.

Letter No.M.480 dated 28-3-1933 from the Manager, Bank of Mysore, Ltd, Bangalore, to the Comptroller, Mysore Government, Bangalore.

Re: Bank's F.D.R.No.39/382 for Rs.4,500/- favouring Mrs. N.S. Padmamma.

In continuation of our letter of the 13th instant we beg to inform you that the proceeds of the above F.D.R. have this day been credited to the loan account of the party, leaving a balance of Rs.215-7-0 at credit.

Copy

D.L.A. Bhuvanagiri Venkatesh Iyengar
Safdr. S.d. S. 2878

Letter No.M.401 dated 13-3-1933 from the Manager, Bank of Mysore, Bangalore, to the Comptroller in Mysore, Bangalore.

With reference to your confidential letter No.2177/S.L. of the 11th instant, we beg to inform you that the cheque for Rs.5,750, referred to was received by us on the 24th March 1932, with a covering letter signed by one Mrs. N.S.Padmamma, No.27, VI Cross Road, Malleswaram, Bangalore, instructing us to place Rs.4,500/- in Fixed Deposit Account with us in her name, and the balance to be paid to her. Accordingly, a sum of Rs.4,500/- was placed in Fixed Deposit in her name and the balance was remitted to her by a Pay Warrant.

She has also borrowed on the security of her Fixed Deposit Receipt and the amount of loan now outstanding is Rs.4,297-7-0 exclusive of interest from 1-1-1933.

We note to furnish the necessary information to the investigating officer.

---

copy:

D. Lakshminarasimhaiya
Supdt. S.L.S.
28/8/33

Letter No.2177/S.L. dated 11-3-1933 from the Comptroller, Mysore Government, to the Manager, The Bank of Mysore, Ltd, Bangalore.

I have the honour to state that a cheque No.A005444 dated 16-3-1932 for Rs. 5,750, issued by the State Huzur Treasury Officer on the Imperial Bankof India, Bangalore, in favour of one S. Sreenivasan and cashed in your accounts in March 1932 is found to have been obtained from the Treasury fraudulently. The case has been laced in the hands of the police. I request that the proceeds of the cheque to the extent still with you be held at my disposal and not paid to any one. Information that the Police may require in the course of investigation may also be kindly furnished to them.

Copy

D. Lakshminarasimhaya
Enfdr-S.L.S
28/8/33

Appendix F G—1]

SUBJECT .....

.....

.....

General and Revenue Secretariat

( )

the *193*

Date of issue 7/11/33

Signed by Jm M.R.J.Rao

List of enclosures .....

Copied by WJ/11.

Examined by .....

Section

File No.

Serial No.

Diary No. of letter replied to .....

No. Confidential P.2072/Sec I dated 2 Nov 1933 (copy Records Chetpet work)

To

Dear Sir Venkatarangaiengar,

I am desired to return with thanks the entire records in CC. 950 of 32-33 (Govt v Sharma) on the file of the city Magistrate Bangalore, sent with your D.O No ROC 176/33-34 dated 18th August 1933. The receipt of the records may kindly be acknowledged.

Yours Sincerely

Sd/-

S. Venkatarangaiya Iyengar

Registrar

D. O. No. P.207 GENERAL AND REVENUE SECRETARIAT

Dated, Bangalore, 7th November 1933.

Confidential.

Dear Mr. Venkatarangiengar,

I am desired to return with thanks the entire records in C€.950 of 32-33 (Government Vs. Sharma) on the file of the City Magistrate, Bangalore, sent with your D.O.No. R.o.c.176/33-34 dated 18th August 1933. The receipt of the records may kindly be acknowledged.

Yours sincerely,

S.Venkatarangiengar, Esq., B.A., LL.M.,
Registrar, High Court of Mysore,
Bangalore.

10C

D. O. Dy. Dis No: 409/33-34.

41

HIGH COURT
OF MYSORE,
BANGALORE.

8th November 1933.

To.

Dear Mr. Jaya Rao,

I am desired to acknowledge the receipt of the entire records in C.C. No.950/32-33 (Government Vs. Sharma) on the file of the city Magistrate, Bangalore, received with your D. O. letter No. P. 2072 dated the 7th November 1933.

Yours sincerely

S. Venkatarangaiyangar

REGISTRAR.

10/11/33

To

N. R. Jaya Rao, Esq., M.A., LL. B.,
Assistant Secretary to Government,
Law Department,
BANGALORE

ADA.

42

In reply please refer to
No. 303

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 7th November 1933~~38~~.

By Registered Post.
Acknowledgment Due.

Loan 6/F-33-4

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Manager,
The Bank of Mysore, Ltd.,
Bangalore.

SIR,

I am instructed by the Government of Mysore to write to you as follows:-

1. That a Cheque for Rs.5,750/- was obtained fraudulently from the Government Treasury and that it was given over to the Bank of Mysore, Ltd., with false and fraudulent endorsements by one Mrs. N.S. Padmamma about the 24th of March 1932.

2. That the Bank acted very negligently in the matter, undertook to collect the amount, paid Rs.1,250/- to her and held the balance of Rs.4,500/- as a Fixed Deposit.

3. That after knowing all the fraud etc., connected with it, the Bank hastily adjusted towards its dues the said deposit long before its due date, and

4. That under the above circumstances, the Bank is liable to pay over to Government, the aforesaid sum of Rs.5,750/-.

I am instructed by Government to request you as representing the Bank, to pay over to Government Rs.5,750/- with interest thereon at the Bank rate within a week from the receipt of this notice. Please also take notice that if the Bank fails to comply with this request, it will be sued for relief in a Court of Law without further notice and it will also be held liable for the costs of the suit.

Yours faithfully,

Sd/- A. R. Nagesvara Iyer,
Government Advocate.

Copy.

Government Advocate.

2562/33 P&S 43

In reply please refer to
No. 317

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 10th November *1933*.

From

The Government Advocate
in Mysore, Bangalore.

To

The General Secretary to the Govt. of H. H. the Maharaja of Mysore, Bangalore.

Office of the Second Member of Council. 14 NOV. No. 3042

Sir,

In continuation of my Un-official No. 66, dated the 7th instant, I have the honor to forward herewith for the information of Government, a copy of letter No. 23464, dated the 9th November 1933, received from the Manager, Bank of Mysore, Limited., Bangalore.

I have the honor to be,
Sir,
Your most obedient servant,
Government Advocate.

Submitted for perusal
2nd member
Finsec

11/11/33

H.

13/11/33 / 13/11/33

Finsec 17/11/33

15/11

14/11

44

reply please refer to
No. .....

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore,.....193

Copy of letter No.23464, dated the 9th - November 1933, from the Manager, Bank of Mysore, Limited, Bangalore, to the Government Advocate in Mysore, Bangalore.

"We are in receipt of your letter No. 303 of the 7th instant, which we have forwarded to our Solicitor. We will be writing to you - again after we hear from him, which please note".

M. Venugopala Rau
Government Advocate.

H.

Turn

3744933 R 65

In reply please refer to
No. 337

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE

Bangalore, 17th November *1933.*

Encl

FROM

Law 64-33-2

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

GENERAL DEPARTMENT
20 NOV. 1933
No. Law

SIR,

In continuation of this office letter No. 319 of 1933-34 dated the 10th November 1933, I have the honor to forward herewith for the information of Government, a copy of letter No. Nil. dated the 16th November 1933, received from Mr. B. Vasudeva Murthy, Advoca on behalf of his clients, the Bank of Mysore, Ltd., Bangalore.

I have the honor to be,

Sir,

Your most obedient servant,

A. R. Nagesvara Iyer

Government Advocate.

CSN.

Letter No. [illegible] dated 16th November 1933, from B. Vasudeva Murthy, Esq., B.A., B.L., Advocate. Chickpet, Bangalore City, to A.R. Nagesvara Iyer, Esq., B.A.,B.L., Government Advocate, Public Offices, Bangalore.

"I am instructed by my client, the Bank of Mysore, Ltd., to acknowledge receipt of your letter No.303 dated 7-11-33 and to reply thereto as follows :-

" 1. My client is not aware and does not admit the circumstances alleged by you in para (1) of your notice re: the obtaining and the endorsement of the cheque referred to therein."

" 2. My client also denies that it acted with - negligence in the matter or that it is in any way liable to pay over to Government the sum of Rs.5,750/- or any part thereof."

" 3. The cheque for Rs.5,750/- referred to in your letter was received by the Bank on 24th March 1932 for collection from Mrs. N.S. Padmamma, who instructed the Bank to place Rs.4,500/- in F.D. account in the Bank in her name and to pay her the balance. Accordingly a sum of Rs.4,500/- was placed in Fixed Deposit in her name and the balance was remitted to her by a Pay Warrant. Subsequently she was advanced moneys repayable on demand on the security of the said fixed deposit receipt and the amounts outstanding against her on or about the 29th March 1933 were Rs.4,500-1-0, when after notice to her the proceeds of the Fixed Deposit were adjusted against the moneys advanced and there is a balance of only Rs.215-7-0 now standing at her credit."

" 4. Far from my client having been in any way negligent, the negligence in this matter has been - entirely on the part of the Government Officers who were concerned in issuing the pay order and the cheque which the said Mrs. N.S. Padmamma was able to cash - through my client and that my client has all along acted perfectly bona fide and in the usual course of business in collecting the amounts on her behalf and making - payments according to her instructions."

" 5. That my client having advanced moneys bona fide and in the usual and regular course of business against the security of the Fixed Deposit, having absolutely no reason to believe that the amount in deposit belonged to any body other than the - depositor, was fully and absolutely within its rights in exercising its undoubted lien and making the - adjustments, and that the allegations to the contrary referred to in para 3 of your notice, are not correct."

" 6. That my client is not liable under the abovesaid circumstances to refund the amount of the cheque to your client and is unable to understand the vague and indefinite "circumstances" referred to in para 4 of your notice under which payment is claimed from it."

" 7. That while others concerned in this matter may be responsible to make good to Government the loss. if any, it might have sustained in this matter. it is neither in accordance with law or mercantile custom, nor equitable that a bona fide holder in due course,

like my

like my client, should be attempted to be rendered liable to pay moneys of which it has had no benefit and particularly when it has not been to any the least extent - negligent in the matter nor departed in any way from the usual course of business, current in such matters."

" 8. That if in spite of this, Government choose to go to Court, they will be doing so at their own risk and cost and will be held liable for all my client's costs, which please note."

"C o p y"

Government Advocate.

CSN/17.11.33

G.R.S. App. F VI—G 2]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

Section Law

File No. 64-33

Serial No. 3

General and Revenue Secretariat

( )

the *193*

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 28/11/ 1933

Signed by Mr N. S. Rao

Read (1) Letter No: 65/S.L. dated 7th July 1933 from the Comptroller to Govt. recommending the filing of a suit against N.S. Sharma, ~~Read~~ 2) Letter No: 303 dated 7 Nov 1933 issued to the Bank of Mysore Ltd by the Govt Advocate on behalf of the Govt of Mysore Claiming payment of Rs 5750/- with interest etc due on account of a crossed cheque dated 16th March 1932 drawn by ~~Order thereon. No.~~ the State Hereur Treasury officer on the Imperial Bank of India, Bangalore, ~~and~~ the proceeds of which was wrongfully collected by the Bank of Mysore for Mrs Padmamma wife of N.S. Sharma ~~by the Bank of Mysore Ltd.~~

2) Letter No: 337 dated 20th Nov 1933 from the Govt Advocate

for recovery of the amounts misappropriated by him when he was a clerk in the State loan section of his office.

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

GD

forwarding copy of the reply received from Mr. B. Vasudeva murthi Advocate on behalf of the Bank of mysore Ltd, repudiating the Bank's liability in respect of the above mentioned cheque order No P 2501-02/

Govt are advised that there are good grounds for holding the Bank of mysore Ltd liable for the proceeds of the cheque referred to in the Correspondence read above. The Govt Advocate is therefore requested to take immediate steps to file a suit in a proper Court of law to enforce the liability of the Bank of mysore as well as that of N.S. Sharma in this matter under order 27 Rule of the Code of Civil Procedure the Comptroller to Govt is authorised

in accordance with the rules
List of Enclosure.
for the conduct of Legal affairs
of Govt

Copied by

Examined by

G. R. S: Add F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(Continuation sheet draft form.)

no sion and verify the plaint. and to act on behalf of Govt conduct of the said in the said suit He is also requested to place a sum of Rs 450/- at the disposal of the Govt Advocate for the purpose of filing the suit. ~~and~~ Subject to adjustment in due course.

25/11/23 Govt Secy to Govt

1) The Govt Advocate in Mysore
2) The complainant thro Govt Secy

W1 0927—G PB—10,000—15-5-27

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

Read :-

(1) Letter No.65/S.L. dated 7th July 1933 from the Comptroller to Government recommending the filing of a suit against N.S. Sharma for recovery of the amounts misappropriated by him when he was a clerk in the State Loan Section of his Office.

(2) Letter No.303 dated 7th November 1933 issued to the Bank of Mysore Ltd., by the Government Advocate on behalf of the Government of Mysore claiming payment of Rs.3750/- with interest etc., due on account of a crossed cheque dated 16th March 1932 drawn by the State Huzur Treasury Officer on the Imperial Bank of India, Bangalore. the proceeds of which was wrongfully collected by the Bank of Mysore for Mrs. Padmamma, wife of N.S. Sharma.

(3) Letter No.337 dated 20th November 1933 from the Government Advocate forwarding copy of the reply received from Mr. B. Vasudevamurti Advocate on behalf of the Bank of Mysore Ltd., repudiating the Bank's liability in respect of the above mentioned cheque.

Order No. P. 2501—02/Law 66-33-3

Dated, Bangalore, 28th November 1933.

Government are advised that there are good grounds for holding the Bank of Mysore Ltd. liable for the proceeds of the cheque referred to in the correspondence read above. The Government Advocate is therefore requested to take immediate steps in accordance with the Rules for the conduct of legal affairs of Government to file a suit in a proper Court of Law to enforce the liability of the Bank of Mysore as well as that of N.S. Sharma in this matter. Under Order 27 Rule 1 of the Code of Civil Procedure, the Comptroller to Government is authorised to sign and verify the plaint and to act on behalf of Government in the conduct of the said suit. He is also requested to place a sum of Rs.250/- at the disposal of the Government Advocate for the purpose of filing the suit subject to adjustment in due course.

B. Narasimha Rao
for General Secretary to Government.

To

The Government Advocate in Mysore,

The Comptroller to Government,

[redacted]